

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

D. RONALD RENEKER, SPECIAL RECEIVER FOR  
AMERIFIRST FUNDING, INC. aka AMERI-FIRST  
FUNDING, INC. aka AMERI FIRST FUNDING,  
INC., AMERIFIRST ACCEPTANCE CORP.,  
JEFFREY C. BRUTEYN, DENNIS W. BOWDEN,  
AMERICAN EAGLE ACCEPTANCE CORP.,  
HESS FINANCIAL CORP., INTERFINANCIAL  
HOLDINGS CORP., HESS INTERNATIONAL  
PROPERTIES, LLC, HESS INTERNATIONAL  
INVESTMENTS, S.A., UNITED FINANCIAL  
MARKETS, INC. AND GERALD KINGSTON,

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

FILED  
AUG 11 2008  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_ Deputy

Civil Action No. \_\_\_\_\_

**JURY DEMANDED**

3 08 CV 1394 - M

24241

Plaintiffs

vs.

PHILLIP W. OFFILL, JR. AND GODWIN PAPPAS  
RONQUILLO, LLP,

Defendants

**COMPLAINT**

**TO THE HONORABLE COURT:**

Plaintiff D. Ronald Reneker, in his capacity as Special Receiver for Defendants AmeriFirst Funding, Inc. aka Ameri-First Funding, Inc. aka AmeriFirst Funding, Inc., AmeriFirst Acceptance Corp., Jeffrey C. Bruteyn, Dennis W. Bowden, and Relief Defendants American Eagle Acceptance Corp., Hess Financial Corp., InterFinancial Holdings Corp., Hess International Properties, LLC, Hess International Investments, S.A., United Financial Markets, Inc. and Gerald Kingston (hereinafter "Special Receiver"), complains of Defendants Phillip W. Offill and Godwin Pappas Ronquillo, LLP and alleges the following:

**PARTIES**

1. Plaintiff Special Receiver is the Court-appointed Special Receiver in Civil Action No. 3:07-CV-1188-D.

2. Defendant Phillip W. Offill, Jr. (“Offill”) is an individual residing in Collin County, Texas. Offill may be served with process at 2610 Allen Street, Dallas, Texas 75204.

3. Defendant Godwin Pappas Ronquillo, LLP, f/k/a Godwin Pappas Langley Ronquillo, LLP f/k/a Godwin Gruber, LLP (“Godwin Pappas”) is a Texas limited liability partnership. Godwin Pappas may be served with process by serving its registered agent, Thomas S. Hoekstra, at 1201 Elm Street, Suite 1700, Dallas, Texas 75270.

**JURISDICTION AND VENUE**

4. On July 2, 2007, in Civil Action No. 3:07-CV-1188-D, this Court entered an Order Appointing Temporary Receiver (the “Original Receivership Order”) pursuant to which the Court, among other things, took exclusive jurisdiction and possession of the “assets, monies, securities, claims in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated” (hereinafter “Receivership Assets”) then belonging to the Amerifirst Funding, Inc., AmeriFirst Acceptance Corp., Jeffrey C. Bruteyn, Dennis W. Bowden, American Eagle Acceptance Corporation, and Hess Financial Corp., and appointed William D. Brown as Receiver for the Receivership Assets. On August 2, 2007, this Court entered an Amended Order Appointing Temporary Receiver (the “Amended Receivership Order”), which, among others, added InterFinancial Holdings Corp., Hess International Properties, LLC, Hess International Investments, S.A., United Financial Markets, Inc. and Gerald Kingston as additional relief defendants.

5. In paragraph 3 of both the Receivership Order and the Amended Receivership Order, all defendants and relief defendants in Cause Number 3:07-CV-1188-D, as well as all persons in active concert or participation with such defendants or relief defendants who received actual notice of the orders, were directed to “promptly deliver to the Receiver all Receivership Assets in the possession or under the control of any one or more of them … [with] [n]o separate subpoena … required.”

6. This Court has exclusive jurisdiction over the Receivership Assets, and the Amended Receivership Order provides that any action to determine disputes relating to Receivership Assets or whether an asset is an asset of the Receivership shall be filed in this Court. The claims asserted in this action are Receivership Assets.

7. On June 5, 2008, this Court entered an Order (so styled) in which the Court appoint D. Ronald Reneker as Special Receiver to evaluate and prosecute any claims of the Receivership against Offill and Godwin Pappas.

#### **FACTUAL BACKGROUND**

8. At all times material hereto, Offill was an attorney licensed to practice law in the State of Texas, and Godwin Pappas was a law firm. Offill was a partner with Godwin Pappas from the date of its formation until January 2007 and at all relevant times was acting on behalf of himself and Godwin Pappas with respect to the matters that are the subject of this action. During that period, Offill and other attorneys at Godwin Pappas working under Offill’s direction (collectively the “Other Godwin Pappas Attorneys”), acting on behalf of Godwin Pappas, provided legal representation to Jeffrey Brutelyn (“Brutelyn”), Amerifirst Acceptance Corporation (“Amerifirst Acceptance”), Amerifirst Funding, Inc. (“Amerifirst Funding”), and American Eagle Acceptance Corporation (“American Eagle,” and collectively with Brutelyn, Amerifirst

Acceptance, and Amerifirst Funding, the “Amerifirst Clients”). Among other things, in the course of their representation of the Amerifirst Clients, Offill and/or the Other Godwin Pappas Attorneys incorporated Amerifirst Acceptance in February 2006, and prepared the Certificate of Formation, Bylaws, and Organizational Resolutions.

9. Also in connection with their representation of the Amerifirst Clients, Offill and the Other Godwin Pappas Attorneys prepared various documents with the goal of enabling Amerifirst Acceptance and Amerifirst Funding to offer securities for sale to the public. These documents included forms of a Servicing Agreement, a Sale and Servicing Agreement, a Term Sheet, a Subsequent Transfer Agreement, a Subscription Agreement, a Suitability Questionnaire, a Security Agreement and a Promissory Note. On information and belief, these documents were delivered to Brutelyn on or about February 28, 2006.

10. Thereafter, in March 2006, Offill and the Other Godwin Pappas Attorneys continued to prepare additional offering documents for Amerifirst Acceptance, including a Model Accredited Investor Exemption Uniform Notice of Transaction.

11. At no time, however, did Amerifirst Acceptance or Amerifirst Funding use the offering documents prepared by Offill and/or the Other Godwin Pappas Attorneys. Instead, both Amerifirst Acceptance and Amerifirst Funding offered for sale to the public what they termed “Collateral Secured Debt Obligation Notes” (the “CSDOs”). The CSDOs were offered on an interstate basis on a Web page known as “www.Amerifirstcorp.com” and were accompanied by false representations, including the representation that the CSDOs were secured by collateral. In doing so, Amerifirst Acceptance and Amerifirst Funding violated registration and anti-fraud provisions of numerous state and federal securities laws.

12. In early August 2006, the illegal offering of the CDSOs had come to the attention of the Texas State Securities Board (“TSSB”), and Bruteyn and his affiliated entities received an initial verbal inquiry from the TSSB. On August 14, 2006, the initial inquiry was followed by a formal written inquiry requesting information about the offering of the CDSOs and a response within ten (10) days.

13. The Amerifirst Clients engaged Offill and Godwin Pappas to respond to the TSSB inquiry. On September 11, 2006, Offill did so on behalf of Bruteyn, Amerifirst Funding, and American Eagle. In the response, Offill negligently misrepresented to the TSSB that:

- the CDSOs were secured by pledges of vendor’s liens on automobile purchase notes, automobiles, certificates of deposit, and cash;
- the Amerifirst Clients had not utilized promotional materials or advertising;
- the CDSOs were offered to Texas residents only through AmeriFirst Funding’s officers and directors, none of whom were paid any manner of additional compensation;
- Colonial First Advisors was the investment advisor for the CDSO offering, and it was located at 4514 Cole Ave, Suite 600, Highland Park, Texas 75202;
- the Amerifirst Clients had not offered or sold any securities through any internet site; and
- Amerifirst Funding had \$23.5 million in assets.

14. At the time Offill made these statements to the TSSB, Offill and Godwin Pappas either knew or should have known that these statements were false. Specifically, they knew or should have known that:

- the CDSOs were unsecured;

- the Amerifirst Clients were distributing sales materials that had been authorized by one or more of the Amerifirst Clients;
- commissions were being paid to various companies and individuals who sold the CDSOs;
- advertising was taking place on the internet;
- Colonial First Advisors was located in Florida, not Texas; and
- 240 persons or entities had invested in the CDSOs, 140 in Texas and 100 in Florida.

15. Among other things, Offill's and Godwin Pappas' actual or constructive knowledge that the representations made to the TSSB were false is demonstrated through a comparison of the statements Offill made to the TSSB and the statements Offill made to counsel for Lloyds of London ("Lloyd") in a letter dated November 30, 2006. Among other things, in the letter to Lloyds, Offill represented that Amerifirst Funding:

- had sold CSDOs in both Texas and Florida;
- had assets in excess of \$40 million; and
- did have "authorized sales materials."

16. Moreover, as of November 2006, Offill was aware that the Florida State Securities Board was making inquiries as to the activities of the Amerifirst Clients regarding the CDSO offering. Thus, at least as of that point, Offill and Godwin Pappas either knew or should have known that the Amerifirst Clients were not entitled to rely upon any intrastate exemption from state and federal securities laws which regulate public offerings of securities, and that Offill's statement to the TSSB that securities were sold only in Texas was false.

17. At all relevant times, once on notice that their clients were committing illegal and/or fraudulent acts, Offill's and Godwin Pappas' duty was to promptly make reasonable

efforts to dissuade the Amerifirst Clients from further committing such acts, and if they continued, to reveal their misconduct to the proper authorities to the extent necessary to prevent the Amerifirst Clients from committing additional criminal and/or fraudulent acts.

18. Despite this duty, Offill and Godwin Pappas gave the TSSB false information that forestalled the TSSB investigation, thus allowing the Amerifirst Clients to continue their illegal and/or fraudulent activity; failed to adequately advise the Amerifirst Clients that they were violating the law and that they should cease illegally offering securities to the public; and failed to take the action necessary to protect the public and the Amerifirst Clients when such conduct continued. Each such course of conduct was negligence.

19. Moreover, Offill and Godwin Pappas had an attorney-client relationship with the Amerifirst Clients. As such, Offill and Godwin Pappas owed a fiduciary duty to the Amerifirst Clients. Such duty required Offill and Godwin Pappas to act with abundant good faith, perfect candor, openness, and honesty, without concealment or deception. Offill and Godwin Pappas were also required to make a full and fair disclosure of the facts material to the clients' representation. Offill and Godwin Pappas breached their fiduciary duty to the Amerifirst Clients by engaging in the conduct described in paragraph 18 above.

20. As a result of Offill's and Godwin Pappas' negligence and breaches of fiduciary duty, the Amerifirst Clients were able to continue their illegal sales of the CSDOs after Offill's September 11, 2006, letter to the TSSB, thereby rendering the Amerifirst Clients liable to third party investors in the sum of at least \$36.5 million.

21. This action is brought within two years of the date that the wrongful acts committed by Defendants were discovered.

**CAUSES OF ACTION**

**Negligence**

22. Special Receiver incorporates by reference, as if fully set forth, the allegations contained in the foregoing Paragraphs 1-21.

23. Offill and Godwin Pappas were negligent in the performance of their legal services for the Amerifirst Clients. The negligence of Offill and Godwin Pappas was a proximate cause of damages to the Amerifirst Clients. The damages are measured by the difference between the amount owed to the investors by the Amerifirst Clients and the amount of any investor recovery from the assets of the Receivership Estate.

**Breach of Fiduciary Duty**

24. Special Receiver incorporates by reference, as if fully set forth, the allegations contained in the foregoing Paragraphs 1-21.

25. Offill and Godwin Pappas breached their fiduciary duty to the Amerifirst Clients by failing to act with abundant good faith, perfect candor, openness, and honesty; without concealment or deception; and without making full and fair disclosure of all material facts. Offill's and Godwin Pappas' breach of fiduciary duty was a proximate cause of damages to the Amerifirst Clients. The damages are measured by the difference between the amount owed to the investors by the Amerifirst Clients and the amount of any investor recovery from the assets of the Receivership Estate. In addition to all monetary damages that are recoverable, Special Receiver is also entitled to recover any and all fees paid by the Amerifirst Clients to Offill and Godwin Pappas by the Amerifirst Clients in connection with the matters that are the subject of this action, because forfeiture of fees is warranted in a breach of fiduciary duty action.

**Jury Demand**

26. Special Receiver demands trial by jury of all issues so triable.

**PRAYER**

**WHEREFORE**, Plaintiff Special Receiver D. Ronald Reneker prays that Defendants Phillip W. Offill, Jr. and Godwin Pappas Ronquillo, LLP be cited to appear and answer in this action and that upon final hearing,

- (1) Plaintiff recover from Defendants, jointly and severally, monetary damages as described herein and all fees paid by the Amerifirst Clients to Defendants in connection with the matters that are the subject of this action;
- (2) Plaintiff recover from Defendants, jointly and severally, pre- judgment and post-judgment interest as allowed by law;
- (3) Plaintiff recover from Defendants, jointly and severally, costs of court; and
- (3) Plaintiff recover from Defendants, jointly and severally, such other and further relief, whether special or general, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted:

By: 

D. Ronald Reneker, Special Receiver

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